

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LISA COPPOLA LLC d/b/a THE COPPOLA FIRM,

Plaintiff,

v.

Docket No.: 1:19-cv-00678

MATTHEW K. HIGBEE, ESQ., NICHOLAS YOUNGSON,
RM MEDIA, LTD, and HIGBEE & ASSOCIATES,

Defendants.

RICO CASE STATEMENT

Plaintiff, Lisa Coppola LLC d/b/a The Coppola Firm, submits the following as its RICO case statement as required by the Court's Local Rules.

(a) State whether the alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and/or (d). The alleged unlawful conduct is in violation of 18 U.S.C. §§ 1962(a), (b), (c), and (d).

(b) List each defendant and state the alleged misconduct and basis of liability of each defendant. Matthew K. Higbee, Esq., individually and through his law firm Higbee & Associates, falsely represents the existence of a valid and enforceable copyright claim, and then sends threats to thousands of victims through the United States Postal Service to extort money from victims, in violation of 18 U.S.C § 1341.

Defendants Higbee and Higbee & Associates counseled defendants Youngson and RM Media to join them in this pattern of racketeering. Together, defendants orchestrated a system to promote images that are labeled as "free for reuse" in order entrap victims. Moreover, defendants conspired to violate 18 U.S.C. § 1341 when they agreed to orchestrate a scheme that manufactured meritless copyright infringement claims so that defendant Higbee and his law firm could extort victims, using the United States Postal Service, in order to make a profit.

Defendants have derived substantial income, either directly or indirectly, through their pattern of racketeering activity in violation of 18 U.S.C. § 1962.

Defendant Higbee owns Higbee & Associates and controls defendants RM Media and Youngson through a broadly-worded power of attorney.

Defendant Higbee & Associates is engaged in, or engaged in activities that affect interstate commerce and, therefore, is an enterprise as defined by 18 U.S.C. § 1961(4).

Defendants Youngson and RM Media either commanded or aided and abetted the violations of 18 U.S.C § 1341 by making Higbee & Associates their power of attorney. Defendants RM Media and Youngson overtly acted in furtherance of the conspiracy when they assigned Higbee & Associates broad powers as their power of attorney.

Defendants Youngson and RM Media have derived substantial income, either directly or indirectly, through their pattern of racketeering activity in violation of 18 U.S.C. § 1962.

(c) List the alleged wrongdoers, other than the defendants listed above, and state the alleged misconduct of each wrongdoer. At this time, plaintiff is not aware of the identities of wrongdoers other than the defendants.

(d) List the alleged victims and state how each victim was allegedly injured. Upon information and belief, in addition to plaintiff, defendants' victims include thousands of individuals and businesses across the United States. Victims were injured because they paid undeserved and extortionate sums of money to defendants.

These alleged victims include, but are not limited to:

- Meyer, Suozzi, English & Klein P.C. (*Meyer, et al. v. Higbee*, Case No. Case 2:18-cv-03353-ADS-ARL, Docket No. 38 (E.D.N.Y));
- Homeless United for Friendship and Freedom, Professor Claudia Eckelmann, and Mike Spaulding (<https://pubcit.typepad.com/clpblog/2019/02/consumer-warning-copyright-trolling-by-higbee-and-associates.html>);
- Daniel Quinn <https://www.techdirt.com/articles/20190220/13283641640/investigating-higbee-associates-copyright-trolling-operation.shtml>;
Richard Kyanka (<https://www.techdirt.com/articles/20150608/22322431278/lawyers-threaten-somethingawful-using-photo-movie-review.shtml>);
- Members of this Facebook group specifically designed to bring together defendants Higbee and Higbee & Associates' victims, which is found at <https://www.facebook.com/groups/490638598098532/>; and
- Hundreds of individuals identified in the following links:
 - <https://www.complaintsboard.com/complaints/higbee-associates-sued-for-copyright-case-when-i-was-willing-to-settle-mean-wasteful-c797630.html>;
 - <https://www.extortionletterinfo.com/forum/higbee-letter-lawsuits-forum/>;
 - <https://www.techdirt.com/articles/20190220/13071041639/one-persons-unsettling-experience-with-20k-higbee-copyright-troll-demand-letter.shtml>;

- [https://www.extortionletterinfo.com/forum/higbee-letter-lawsuits-forum/nicholas-youngson-photographer-\(rep-by-higbee-associates\)-copyright-abuse/](https://www.extortionletterinfo.com/forum/higbee-letter-lawsuits-forum/nicholas-youngson-photographer-(rep-by-higbee-associates)-copyright-abuse/);
- <https://copyright-demand-letter.com/rm-media-ltd-nick-youngson-files-copyright-lawsuit/>;
- <https://www.quora.com/What-should-I-do-when-I-am-being-sued-by-Higbee-Associates-for-using-an-image-I-got-from-Google-without-a-licence-I-got-mail-saying-that-I-used-an-image-without-having-the-licence-and-now-I-m-being-sued-for-5200>;
- <https://www.sitejabber.com/reviews/higbeeassociates.com>;
- <https://copyright-demand-letter.com/higbee-associates-copyright/>;
- <https://matthewsag.com/category/copyright-trolls/>;
- <https://www.ripoffreport.com/report/higbee-associates-law-firm/snt-n-c-clss-ction-suit-ginst-1477741>; and
- <https://www.techdirt.com/articles/20190606/15054242346/mathew-higbee-cuts-runs-when-finally-challenged-questionable-shakedown.shtml>

(e) Describe in detail the pattern of racketeering activity or collection of unlawful debts alleged for each RICO claim. A description of the pattern of racketeering shall include the following information: Defendants Higbee and Higbee & Associates engage in a pattern of racketeering by using the United States Postal Service to send threatening demands for payment in violation of 18 U.S.C § 1341. The threats demand, often without basis, payment of substantial sums of money. In many cases there is no legal basis to support the payment demanded. Nonetheless defendants Higbee and Higbee & Associates, threaten litigation and significant damages, often as much as \$150,000.00, in order to coerce payment from victims who do not have the means to defend themselves. Defendants RM Media and Nick Youngson conspired with defendants Higbee and Higbee & Associates and agreed to be part of this scheme. As an overt act to participate in the conspiracy and engage in this pattern of racketeering defendants RM Media and Nick Youngson assigned full power of attorney over their claims to defendants Higbee and Higbee & Associates.

A description of the pattern of racketeering shall include the following information:

(1) List the alleged predicate acts and the specific statutes which were allegedly violated: Based on the forgoing, defendants violated 18 U.S.C § 1341.

(2) Provide the dates of the predicate acts, the participants in the predicate acts, and a description of the facts surrounding the predicate acts: Plaintiff received threats from defendants Higbee and Higbee & Associates dated March 6, 2019 and May 9, 2019. Each threat demanded payment of monies not owed to defendants in relation to an unenforceable claim of copyright infringement.

(3) If the RICO claim is based on the predicate offenses of wire fraud, mail fraud, or fraud in the sale of securities, the “circumstances constituting fraud or mistake” shall be stated “with particularity.” Fed.R.Civ.P. 9(b). Identify the time,

place and contents of the alleged misrepresentations, and the identity of persons to whom and by whom the alleged misrepresentations were made: On or about March 6, 2019 and May 9, 2019, defendants used the United States Postal Service to send a demand for money that relied on false pretenses. Specifically, defendants demanded money from plaintiff for infringing on a copyright after defendants specifically made the image available to plaintiff for free. Defendants demanded exorbitant statutory damages in the amount of \$150,000.00 to which defendants were not entitled. In addition, defendants sent to plaintiff a complaint drafted to be filed with the Western District of New York, but signed by Defendant Higbee. Defendant Higbee is not admitted to practice law in New York State or the Western District of New York further displaying the false pretenses under which the communication was sent.

On or about February 5, 2018 and May 22, 2018, Meyer, Suozzi, English & Klein P.C. received similar threats from defendants Higbee and Higbee & Associates which demanded money damages in relation to a bogus copyright infringement claim.

(4) State whether there has been a criminal conviction for violation of each predicate act. No. However, the New York State Attorney General's office is investigating defendants Higbee, Higbee & Associates, and their counsel in this action, Rayminh L. Ngo, Esq.

(5) State whether civil litigation has resulted in a judgment in regard to each predicate act. No.

(6) Describe how the predicate acts form a "pattern of racketeering activity." The predicate acts, namely instances of mail fraud against numerous victims have been ongoing for several years. For example, Richard Kyanka received a threat from defendant Higbee dated June 1, 2015. (<https://www.techdirt.com/articles/20150608/22322431278/lawyers-threaten-somethingawful-using-photo-movie-review.shtml>). Meyer, Suozzi, English & Klein P.C. received similar threats dated February 5, 2018 and May 22, 2018. Plaintiff received threats from defendant Higbee in March and May of 2019.

(7) State whether the alleged predicate acts relate to each other as part of a common plan. If so, describe in detail. The predicate acts all relate to each other as part of a common plan to enrich defendants Higbee, Higbee & Associates, and other individuals who participate in the scheme such as defendants Youngson and RM Media. Each instance involves defendants Higbee and Higbee & Associates entrapping a victim and then sending a demand through the United States Postal Service to extort undeserved compensation from victims. Defendants Higbee and Higbee & Associates make arbitrary demands for money that are not supported by the law or the facts that they describe. Then they threaten litigation and pursuit of damages as high as \$150,000.00 to coerce victims into making payment to defendants.

(f) Describe in detail the alleged enterprise for each RICO claim. A description of the enterprise shall include the following information:

- (1) State the names of the individuals, partnerships, corporations, associations, or other legal entities, which allegedly constitute the enterprise.** Matthew K. Higbee, Esq. and Higbee & Associates.
- (2) Describe the structure, purpose, function and course of conduct of the enterprise.** Defendant Higbee is an attorney and defendant Higbee & Associates is a law firm owned by Higbee. Defendants Youngson and RM Media are clients of the Higbee & Associates. Defendant Youngson owns RM Media. Defendant Youngson is a photographer. Defendant RM Media owns and sells images online. At the advice and direction of Higbee and Higbee & Associates, defendants RM Media and Youngson make images available online for free. The free images are then ***promoted and labeled*** as free to use. The “free to use” label lures consumers into using the free images online. Defendants RM Media and Youngson then hire defendants Higbee and Higbee & Associates to run reverse image searches to identify where and how the “free to use” images have been used. Once defendants locate a user, defendant Higbee and his law firm send a letter through the United States Postal Service to demand payment from the user. In most instances, the demand is for several thousand dollars. If the user does not pay, defendant Higbee threatens litigation and pursuit of damages in an amount, typically in the amount of \$150,000.00. At this stage, the user typically pays defendants because s/he cannot afford a lawyer to defend against the claims. Collectively, defendants have targeted thousands of victims over a period of at least four years.
- (3) State whether any defendants are employees, officers or directors of the alleged enterprise.** Defendant Higbee owns Higbee & Associates.
- (4) State whether any defendants are associated with the alleged enterprise.** Defendants Youngson and RM Media are associated with the enterprise. Namely they are clients of the enterprise, cooperate with the enterprise, and have affirmatively assigned the enterprise their full power of attorney in order to make a profit.
- (5) State whether you are alleging that the defendants are individuals or entities separate from the alleged enterprise, or that the defendants are the enterprise itself, or members of the enterprise.** Defendant Higbee & Associates is the enterprise, and it is owned by defendant Higbee. Each other defendant is separate from the enterprise but a perpetrator of the racketeering activity.
- (6) If any defendants are alleged to be the enterprise itself, or members of the enterprise, explain whether such defendants are perpetrators, passive instruments, or victims of the alleged racketeering activity.** Defendant Higbee & Associates is the enterprise, and the law firm is a passive instrument by which defendant Higbee is an active perpetrator.

- (g) State and describe in detail whether the pattern of racketeering activity and the enterprise are separate or have merged into one entity.** The pattern of racketeering is separate from the enterprise, because defendant Higbee & Associates is, upon information and belief, involved in some legitimate legal work.
- (h) Describe the alleged relationship between the activities of the enterprise and the pattern of racketeering activity. Discuss how the racketeering activity differs from the usual and daily activities of the enterprise, if at all.** The activities of the enterprise consist of the pattern of racketeering activity intermingled with some legitimate legal work. The pattern of racketeering activity differs from the legitimate claims because defendants intentionally lure a victim into using a copyrighted image and then demand payment from the victim for using the image even though defendants know they have no valid claim of copyright infringement and are not legally entitled to the damages that they demand.
- (i) Describe what benefits, if any, the alleged enterprise receives from the alleged pattern of racketeering.** Defendant Higbee, the owner of the enterprise, is compensated when the fraudulent claim results in payment by a victim. Defendants Youngson and RM Media also profit from funds obtained from victims.
- (j) Describe the effect of the activities of the enterprise on interstate or foreign commerce.** The activities of the enterprise involve demands for payment that frequently cross state lines. In addition, because defendants RM Media and Youngson are located in the United Kingdom, the activities cause payment to be sent to foreign countries. Moreover, the images that are falsely labeled as “free to use” are marketed online, internationally.
- (k) If the complaint alleges a violation of 18 U.S.C. § 1962(a), provide the following information:**
- (1) State who received the income derived from the pattern of racketeering activity or through the collection of an unlawful debt.** Defendant Higbee through defendant Higbee & Associates collects the unlawful debt from victims and then share the funds with members of the enterprise including defendants RM Media and Youngson. Often defendant Higbee collects the funds by use of a credit card authorization that is sent to victims with his threat, sometimes via the United States Postal Service, to further entice the victim to pay defendants.
- (2) Describe the use of investment of such income.** The unlawful debts collected are then invested into the furtherance of the enterprise. For example, defendant Higbee the owner of Higbee and Associates invests the unlawful debts that he collects to grow his law firm and pursue additional victims.
- (l) If the complaint alleges a violation of 18 U.S.C. § 1962(b), describe in detail the acquisition or maintenance of any interest in or control of the alleged enterprise.** Defendant Higbee continues to own and control Higbee & Associates.

(m) If the complaint alleges a violation of 18 U.S.C. § 1962(c), provide the following information:

(1) State who is employed or associated with the enterprise. Defendants Youngson and RM Media are associated with Higbee & Associates and have assigned Higbee & Associates full power of attorney.

(2) State whether the same entity is both the liable “person” and the “enterprise” under section 1962(c). The liable person is separate from the enterprise

(n) If the complaint alleges a violation of 18 U.S.C. § 1962(d), describe in detail the alleged conspiracy. Defendants conspired to orchestrate a scheme by which defendants would lure victims into believing they could and were permitted to use images free of charge and then, when the victims did so, defendants demand payment from the victims by sending threats under the cover of Higbee & Associates through the United States Mail. At all times, each and every one of the defendants knew the copyright claims for which they would demand payment were not legitimate.

(o) Describe the alleged injury to business or property. Plaintiff has been injured because it has been required to devote substantial time and resources away from its business to research and defend against the false copyright claims and harassment by defendants. Plaintiff's injury and damages also includes monetary expenses such as hiring legal counsel.

(p) Describe the direct causal relationship between the alleged injury and the violation of the RICO statute. The injury to plaintiff was directly caused by the violation of the RICO statute, namely the fraudulent demand for payment that defendant Higbee sent through the United States Postal Service. Upon receiving the demand, plaintiff immediately hired legal counsel, thereby incurring expense.

(q) List the damages sustained for which each defendant is allegedly liable.

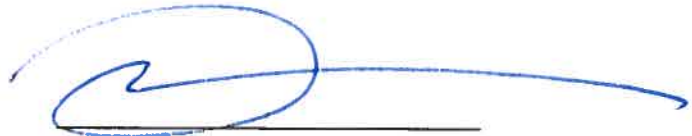
Each defendant is liable for damages to plaintiff totaling approximately \$20,000.00 which continues to accrue. The sum is comprised of outside legal counsel fees incurred as a result of the RICO violation and the loss of income plaintiff would have generated had it been able to dedicate the time and attention spent on this case to its other paying clients.

(r) List all other federal causes of action, if any, and provide the relevant statute numbers. Plaintiff seeks declaratory relief pursuant to the copyright laws of the United States (17 U.S.C. §§ 101 et seq.) and the Declaratory Judgment Act (28 U.S.C. §§ 2201, 2202).

(s) List all pendent state claims, if any. Plaintiff articulates a claim based on defendants' violation of New York General Business Law § 349.

(t) Provide any additional information that would be helpful to the Court in processing your RICO claim. Since this action, plaintiff has received numerous unsolicited contacts from additional victims of defendants. These victims included businesses from various locations in the United States, some of whom or which already have been coerced into paying money to Higbee & Associates and others who or which desire to defend against the defendants' unlawful conduct. Plaintiff expects to receive substantially more detail about the inner workings of defendants' racketeering activity in discovery.

Dated: Buffalo, New York
August 27, 2019



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